

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

In re

**PAUL KLINK and JANICE  
KLINK,**

Debtors.

Case No. **03-61719-7**

**O R D E R**

At Butte in said District this 29<sup>th</sup> day of July, 2005.

In this Chapter 7 bankruptcy, the Trustee filed an Objection to Proof of Claim No. 4 filed by CBB Collections, Inc. The Trustee asserts in his Objection that “Claim number 4 filed by CBB Collections, Inc. appears to be founded on an agreement in writing i.e., a credit application. No such agreement is attached to the proof of claim”. The Court disagrees that CBB Collections, Inc.’s claim is premised on a credit application. The claim stems from collection efforts undertaken by CBB Collections, Inc. to collect on services rendered by Billings Anesthesiology, PC and Deaconess Behavioral Health.

Pursuant to Federal Rule of Bankruptcy Procedure 3001(f), a proof of claim completed and filed in accordance with 11 U.S.C. § 501 and any applicable Bankruptcy Rules constitutes *prima facie* evidence of the validity and amount of the claim. Thus, if a procedurally proper claim is filed, an objecting party carries the burden of going forward with evidence contesting the validity or amount of the claim. *In re Weber*, 16 Mont. B.R. 49, 56 (Bankr. D.Mont. 1997); *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9<sup>th</sup> Cir. 1991). However, once an objecting party succeeds in overcoming the *prima facie* effect given to the claim by Rule 3001(f), the burden shifts to the claimants to prove the validity of their claims by a preponderance of the

evidence. *In re Allegheny Int'l, Inc.* 954 F.2d 167, 173-74 (3<sup>rd</sup> Cir. 1992).

In the instant case, the Trustee's naked assertion that CBB Collections, Inc.'s claim is premised on a credit application does not overcome the *prima facie* effect afforded the claim by Federal Rule of Bankruptcy Procedure 3001(f). Accordingly,

IT IS ORDERED that the Trustee's Objection to Proof of Claim No. 4 filed by CBB Collections, Inc. is overruled; and the Trustee is granted leave to request reconsideration of the instant Order and notice the matter for hearing to allow the Trustee an opportunity to present evidence to overcome the *prima facie* effect of the claim.

BY THE COURT

A handwritten signature in cursive script, reading "Ralph B. Kirscher", is written over a horizontal line.

HON. RALPH B. KIRSCHER  
U.S. Bankruptcy Judge  
United States Bankruptcy Court  
District of Montana